IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2299 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABUSUFIYAN MUSTAQ AHMAD KHAN - Petitioner(s)

Versus

MARIAM WD/O ABED PATHAN & 2 - Respondent(s)

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Appearance :
None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 1,MR BJ JADEJA for Petitioner(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
None for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9.
MR M.R.MENGDEY, ASST. GOVERNMENT PLEADER for Respondent (s) : 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged

the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 17.11.89 passed in Revision Application No. TEN.B.S.183/87 in dismissing the same and confirming the order passed by the Dy. Collector, Valsad dated 4.6.87 passed in Tenancy Appeal No.561/85 as well as the order passed by the Mamlatdar & ALT, Patdi dated 3.1.85 passed under Section 84(C) of the Bombay Tenancy Act declaring the sale transaction in favour of the petitioners as invalid and directing the parties to restore the land along with rights and interest therein to the position in which it was immediately before the transfer.

2. The Father of the petitioners' Mustaq Ahmed Mukhtyar Ahmad had purchased the agricultural land bearing Survey No.288 admeasuring 5 Acres and 33 Gunthas situated at village Dungara, Taluka Patdi, District Valsad by registered sale-deed dated 30th August, 1979 and his name came to be entered in the revenue record vide Entry No.2186 dated 20th October, 1980 and that proceedings were initiated by the Mamlatdar & ALT, Patdi by registering Tenancy Case No.84C/9334/84 under Section 84(C) of the Bombay Tenancy Act and in the said proceedings the sale was declared invalid by the Mamlatdar & ALT, Patdi by its order dated 27.5.83.

Deceased Mustaq Ahmed Mukhtyar Ahmed challenged the said order by preferring appeal before the Dy. Collector (Land Reform), Valsad and the said appeal came to be dismissed against which Revision Application was filed before the Gujarat Revenue Tribunal being Revision Application No.TEN.B.S.452/83 and the same was allowed and the matter was remanded to Mamlatdar & ALT, Patdi by its judgment and order dated 22.6.84. Thereafter, on remand, the Mamlatdar & ALT, Patdi held afresh inquiry and again by its order dated 3.1.85 declared the sale invalid and directed the parties to restore the land along with the rights and interest therein to the position in which it was immediately before the transfer. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Patdi dated 3.1.85, the deceased challenged the same before the Dy. Collector being Tenancy Appeal No.561/85 and the Dy. Collector by its judgment and order dated 4.6.87 dismissed the said Appeal. Being aggrieved and dissatisfied with the same, the deceased preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No. TEN. B.S.183/87 and the Gujarat Revenue Tribunal by its judgment and order dated 17.11.87 dismissed the said Revision Application confirming the orders passed by both the

authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 17.11.89 passed in Revision Application No.TEN.B.S.183/87, the petitioners who are the heirs of deceased Mustaq Ahmad Mukhtyar Ahmed have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri B.J.Jadeja, learned advocate appearing on behalf of the petitioners has vehemently submitted that the initiation of the proceedings by the Mamlatdar & ALT, Patdi after a period of 3 years of sale transaction was after unreasonable period and proceedings were required to be initiated within a reasonable period and when the proceedings were initiated under Section 84(C) of the Bombay Tenancy Act after a period of 3 years, as held by the Hon'ble Supreme Court as well as by this Court in catena of judgments, the same was not permissible. Relying upon the judgment of the Hon'ble Supreme Court in case of ***State of Gujarat V/s. Patel Raghav Natha & Ors. reported in 10 GLR P.992,*** it is submitted that when the proceedings initiated after unreasonable period, the same is not permissible. It is further submitted that normally two years are considered to be the reasonable period and in the

present case as the proceedings came to be initiated after a period of three and half years and in the meantime, when the petitioners have invested considerable amount for improvement of the land in question, the action of the authority is not just and proper and the same is illegal and therefore, it is requested to allow the present Special Civil Application.

4. Per contra, Shri M.R.Mengde, learned AGP has submitted that when the sale in favour of the deceased was illegal, mere lapse of time would not make the action of the authority invalid and therefore, all the authorities are justified in declaring the sale invalid and directing the parties to restore the land along with rights and interest therein to the position which was prevalent prior to the transfer and even therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the sale took place on 30th August, 1979 and the Entry was made in the revenue

Record on 20th October, 1980 and the proceedings came to be initiated after a period of 3 years. Relying upon the judgment of the Hon'ble Supreme Court in case of ***Mohmad Kavi Mohmad Amin V/s. Fatma Ibrahim reported in 1997(6) SCC P.71*** and other judgments, the Division Bench of this Court in case of ***Valjibhai Jagjivanbhai V/s. State of Gujarat reported in 2005(2) G.L.H. P.34*** has held that even in a case where transaction is nonest and/or nullity, the powers are required to be exercised within a reasonable period. In the present case, apart from the fact that the powers are not exercised within a reasonable time but it is the contention on behalf of the petitioners that in fact, the deceased was an agriculturist, this fact was not properly considered by all the authorities below. Considering the above aspects, the order passed by the Mamlatdar & ALT, Patdi passed under Section 84(C) declaring the sale invalid requires to be quashed and set aside and the subsequent orders confirming the same are also required to be quashed and set aside.

7. For the reasons stated above, the petition succeeds. The judgment and order passed by the Gujarat Revenue Tribunal dated 17.11.89 passed in Revision Application No.TEN.B.S.183/87 and the order passed by the Dy.

Collector (Land Reforms), Valsad dated 4.6.87 passed in Tenancy Appeal No.561/85 as well as the order passed by the Mamlatdar & ALT, Patdi dated 3.1.85 passed in Tenancy Case No.84C/9334/84 are hereby quashed and set aside.

8.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.